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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,772	04/02/2004	Daisuke Yahata	360842009711	9959
<div>7590 Barry E. Bretschneider Morrison & Foerster LLP Suite 300 1650 Tysons Boulevard McLean, VA 22102</div>				
02/17/2010				
EXAMINER				
TENTON, LEO B				
ART UNIT		PAPER NUMBER		
1791				
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02/17/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,772

Applicant(s)

YAHATA ET AL.

Examiner

Leo B. Tentoni

Art Unit

1791

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25 and 27-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The declaration filed on 22 January 2010 under 37 CFR 1.131 has been considered but is ineffective to overcome the Okawa et al (JP 2002-105752 A) reference.

In paragraph 6, the inventors declare that there is an attached data sheet which describes process conditions used to produce yarns described in the test reports (described earlier in the declaration), that the data sheet was prepared and dated prior to 10 April 2002, that the data sheet describes acts that were carried out in Japan (a WTO member country) prior to 10 April 2002, that the data sheet has been redacted to remove portions not relevant to the claimed invention, and that an English translation of the relevant portions of the data sheet is provided. However, inspection of all of the pages of all of the papers filed on 22 January 2010 (i.e., RCE, declaration, remarks, time extension, fee worksheet, EFS receipt) fails to show the presence of a data sheet. Therefore, the submitted declaration does not show possession of the claimed invention, namely a process of making aliphatic polyester multifilament crimped yarn by crimping drawn multifilament fiber in a crimp-providing apparatus that utilizes heated air at 120 - 170°C.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okawa et al (JP 2002-105752 A) in combination with O'Donnell et al (U.S. Patent 6,770,356 B2).

Okawa et al (see the entire document, in particular, the English-language translation) teaches a process of making aliphatic polyester multifilament crimped yarn including providing a crimp to a drawn multifilament fiber by using a crimp-providing apparatus that utilizes heated air (temperature of 160 - 210°C), wherein the aliphatic polyester includes polylactic acid, and the yarn is produced by drawing 3.0 - 5.0 times in total. Okawa et al does not explicitly teach a two-step

drawing process (Okawa et al does teach a drawing process). O'Donnell et al (see the entire document, in particular, col. 1, line 23; col. 2, line 61 to col. 3, line 2; col. 5, lines 52-55; col. 6, lines 37-55) teaches a process of making aliphatic polyester (e.g., polylactic acid) multifilament crimped yarn including a two-step drawing process wherein the first draw ratio is less than about 4 and the second draw ratio is 0.8 to 1.5, and such would have been obvious to one of ordinary skill in the art at the time the invention was made in the process of Okawa et al in view of O'Donnell et al principally in order to provide fibers that have high elongation at high strain rates and that are thermally stable.

Response to Arguments

5. Applicant's arguments filed on 22 January 2010 have been fully considered but they are not persuasive.
6. As set forth in paragraph 1 above, the declaration filed under 37 CFR 1.131 has been considered but is ineffective to overcome the Okawa et al (JP 2002-105752 A) reference.

Conclusion

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the

submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leo B. Tentoni whose telephone number is (571) 272-1209. The examiner can normally be reached on Monday - Friday (6:30 A.M. - 3:00 P.M.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina A. Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leo B. Tentoni/
Primary Examiner, Art Unit 1791